

C-2623

OBJECTIONS
OF THE
ROYAL INSTITUTION
TO ANY LEGISLATION AFFECTING THE PROPERTY KNOWN
AS THE
Crystal Palace Property,
MONTREAL.

The Royal Institution was in 1860, and for more than 30 years previously, the owner in trust for McGill University of the land in question, which was given by the late Mr. James McGill for the purposes of Protestant Education.

In August, 1860, the Royal Institution leased the property for a rental of \$1,200 for special purposes of an Educational character to the Board of Arts and Manufactures, then existing under the Statute 20 Vic. c. 32, for so long only as these purposes should be carried out. It also loaned to that Board \$12,000 to aid in the construction of the Crystal Palace.

On the 2nd October, 1860, the Government lent to the Royal Institution the sum of \$40,000, and accepted as part security for payment of that sum an assignment of the \$12,000 due by the Board of Arts and also of the yearly rent of \$1200.

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The transfer and arrangement so made were accepted by the Board of Arts and Manufactures, which bound itself to the Government in accordance with its terms.

The Board of Arts and Manufactures made no attempt at any time to carry out the purposes of the Lease. The Building was used for public concerts and entertainments, and in 1861 was, by the formal permission of the Board of Arts and Manufactures, taken possession of by the Government and used for military purposes; such as the keeping of Artillery, the guns being drawn in and out by horses whenever required,—the drilling of troops, and other purposes of a like nature.

This non-fulfilment of the purposes of the Lease terminated it by the terms of the grant which was only to continue while these purposes were carried out.

It is not here a question of forfeiture by violation of conditions, but one of the lease being spent by the limitation of time indicated in the words of the grant itself. But the lease was also forfeited by the violation of the conditions which gave the Royal Institution the right of re-entry *ipso facto* and without process of law upon such violation, and the stipulation is declared not to be comminatory.

On the coming into force of the British North America Act, 1867, the land and building passed into the possession of the Dominion Government, and continued to be used by it for the military purposes stated above until the year 1873 and the building till Sept. last

In 1869 the Statute 20 Vic. c. 32, under which the then Board of Arts and Manufactures existed with which Board alone the Royal Institution had contracted, was repealed by the Statute 32 Vic. c. 15, and that Corporation became extinct.

The repealing Statute 32 Vic. c. 15 created another Board of Arts and Manufactures, but this latter Board was *not in any manner, either directly or by implication, vested with the property of or made liable for the debts of the former Board.*

The silence of the latter Statute as to the succession of the new Board to the old was undoubtedly intentional, as the old Board was deeply involved in debt without any available assets. It was in fact then, and had been for many years before, insolvent. Exclusive of the loan for \$12,000 with interest, it owed other large sums of money, and had been obliged to compromise one builders' and mortgage debt of upwards of \$8000 for less than 30 cents in the dollar.

It is, however, of no importance, in so far as the legal consequence is involved, whether the silence of the Statute 32 Vic. c. 15, as to the devolution of the succession of the old Board was intentional or not. The important fact is that the provision giving succession is not there. This is admitted on all hands, even by the Counsel of the adverse party, and has been formally declared in a Court of Law.

The Council of Arts and Manufactures has not therefore any right or capacity under which it can sue the Royal Institution or any other party for anything which previously appertained to the old Board of Arts and Manufactures. It does not in any manner or degree represent that Body.

On the 17th June, 1873, after a good deal of negotiation and careful examination, a deed was executed under which the Government received the amount of the debt due to it and discharged the mortgage upon the property of the Royal Institution, retaining in its possession the

Exhibition Building, which it agreed to remove from the ground within seventy-five days, and which it has since sold to the purchaser of the land.

In this absolute absence of right or capacity to make a judicial claim the Council of Arts and Manufactures seeks to obtain a title by Legislation.

The Royal Institution has no fear of the final result of testing the whole matter in a Court of Law, but a protracted litigation would be very injurious to it. The interest on the purchase money of the property which has been sold would be unavailable probably for years, and the University would be thus deprived of a large resource upon which it is greatly dependent for paying its professors. This loss, with the sums which must be sunk in law expenses, will cause serious and permanent embarrassment and materially cripple its Educational work, if not permanently, at least for a long time to come.

The Royal Institution objects to any Legislation which will change the relation or *status* of the parties, as unjust and arbitrary, and a palpable usurpation of the functions of the Courts of Law. And it claims that this question of acquired rights, which has already been brought before the Courts, shall be left to be dealt with by the proper tribunals of the country.

The Legal reasons briefly assigned are (among others) the following :

1. The Legislature cannot take away acquired rights either directly or indirectly. It is *ultra vires*.
2. There is no object in passing an Act other than to help the Council of Arts and Manufactures to bring an action against McGill University which it has not now the right to bring.
3. By the proposed Legislation the status of the parties will be changed, and a title now legally vested

in one party will be assailed with a view to give it to another which now confessedly has no title.

4. The Council of Arts and Manufactures has no more right by law to be declared the successors of the old Board of Arts and Manufactures than has any other corporation, for there is an essential difference in the character and constitution of the two. The Board of Arts and Manufactures was in a great measure made up of representatives of educational and scientific bodies who were *ex-officio* members, while the Council of Arts and Manufactures is a *quasi* political body, the creature of the government of the day.

5. The property was sold in good faith long before this claim was set up. The purchaser has paid a large portion of the purchase money (\$28,000) and has been for some months in possession. To make a law for enabling a claimant to disturb all these relations and rights is a violation of justice and principle.

6. No pretended successor of the spent Corporation can now be vested with its rights, because at the moment of its extinction its succession devolved by the mere operation of law either upon the Dominion Government, which was in actual possession, or upon the Quebec Government, (subject in either case to the right of re-entry by the University upon the property in question.) The Dominion Government claims the ownership. It has exercised that right, and has sold the Crystal Palace to a third party, who is now and for some months has been in actual possession. The Legislature therefore cannot take from either Government the succession which by law devolved upon it by assuming to make another successor to oust the actual legal successor, and this after

a lapse of five years when the property has been disposed of by sale to innocent third parties.

7. The present Council of Arts of course could not have been the successor, for it was not in existence when the corporation became extinct and the succession devolved, and the Legislature cannot now make the Board of Arts which immediately preceded the Council of Arts the successor, for that corporation (the 2nd Board of Arts and Manufactures) no longer exists. To make it after its absolute extinction for three years the successor of the original Board of Arts, and the medium of transmission to the present Council of Arts, violates all notions of legal principle, and is a simple absurdity.

8. Not only is the Legislature silent in the Statute 32 V. c. 15 as to any transmission of the rights of the old Board to the new one, but it is also silent in the Statute creating the present Council of Arts and Manufactures. Thus there are two statutes relating to this subject, neither of which contains any provision upon so obvious and important a branch of it as the succession to the rights of the extinct corporation.

The intention of a Legislature can only be sought in its Statutes, no extrinsic circumstance can be admitted to prove that it meant something which it has not said.

9. The idea of a declaratory law to create the succession is preposterous. Declaratory laws are legislative interpretations of existing Statutes (always to be regarded with jealousy, and never admissible but in extreme cases), but to call that a declaratory Statute which contains positive Legislation to supply a provision never made is clearly unjustifiable. You cannot interpret a statutory provision which does not exist.

There is nothing to interpret. No sane man will contend that one Legislature can say of the Statute of another that it intended a certain piece of legislation but forgot or omitted to enact it, and thereupon *declare* that *it was enacted*.

The consequence of admitting such a doctrine might upset by retrospective laws all the institutions of society.

On behalf of the Royal Institution.

CHS. D. DAY,

President.